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Review of capacity-building and technical assistance in competition law and policy

Note by the UNCTAD secretariat

Executive summary

This annual report reviews the capacity-building and technical cooperation activities of the UNCTAD secretariat as well as those of other development partners during the period 2012–2013. The report contains information provided by member States on technical cooperation activities provided or received, bilaterally or regionally, in the area of competition law and consumer policies.

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Introduction

1. Competition and consumer protection can play a direct and important role in promoting economic growth and reducing poverty. Competition stimulates innovation, productivity and competitiveness, contributing to an effective business environment. This generates economic growth and employment. It creates possibilities for small and medium-sized enterprises, removes barriers that protect entrenched elites and reduces opportunities for corruption. Competition, therefore, increases a country's attractiveness as a business location, triggering national and foreign investments. Competition also delivers benefits for consumers through lower prices, improved services and greater choice. In this sense, competition generates total consumer welfare. Consumer protection benefits all consumers by ensuring that they have the right of access to non-hazardous products; to adequate information to enable them to make informed choices according to individual wishes and needs; and to effective redress. Empowered consumers, who know their rights and enforce them, are subject to fewer abuses. This directly improves their welfare. It also contributes to creating a level playing field for businesses which have to apply a common set of standards, supporting competition.

2. The United Nations Set of Principles and Rules on Competition directed UNCTAD to provide technical assistance and advisory and training programmes on competition and consumer policies to interested developing countries and economies in transition.

3. UNCTAD capacity-building and technical assistance includes the following:

- Formulating new or strengthening existing competition legislation that fits their specific legal and economic structure and can best address their development needs;
- Establishing new or strengthening existing competition institutions;
- Capacity-building for better enforcement of competition law;
- Promoting a competition culture through competition advocacy activities;
- Conducting voluntary peer reviews of competition law and policy.

4. To achieve these objectives, UNCTAD works closely with competition authorities in member States, development partners, the Organization for Economic Cooperation and Development (OECD), the International Competition Network (ICN) and competition experts from the private sector and academia. This annual report contains information on the capacity-building and technical cooperation activities of the UNCTAD secretariat for the period 2012–2013, as well as information provided by member States and international organizations to UNCTAD on technical cooperation activities in the field of competition law and policy.

5. The report is articulated in four sections: following the introduction, section I focuses on capacity-building provided by UNCTAD at national and regional levels during the period 2012–2013; section II is devoted to capacity-building reported by member States and other international organizations; section III deals with capacity-building and technical assistance reported by recipient countries; section IV summarizes some of the lessons and best practices identified by donor agencies and institutions.

I. UNCTAD's capacity-building activities

A. Activities extended to individual countries

6. In 2012–2013, UNCTAD continued its demand-driven efforts to assist in the creation of a competition culture in developing countries. To that end, UNCTAD provided technical assistance related to the preparation, adoption, revision or implementation of national competition and consumer protection policies and legislation, as well as in areas contributing to a better understanding of the issues involved, and building national institutional capacity to enforce effective competition legislation. UNCTAD also assisted Governments in identifying the role of competition policy in development, its implication at national, regional and international levels, as well as strategies for regional and subregional cooperation in this field. The main areas of UNCTAD's technical assistance for the period are described in the following paragraphs.

1. Assistance in the preparation of national competition laws

7. Within the framework of the efforts to help countries draft and/or review their competition legislation, UNCTAD assisted the Governments of Brunei Darussalam, Paraguay, Guatemala and Comoros in the drafting of their competition law and assisted Seychelles, Zimbabwe and Serbia in revising their law. The competition laws of Comoros and Paraguay were adopted in 2013.

2. Competition advocacy

8. UNCTAD's various advisory and training activities were combined with other events or provided through seminars, workshops, other meetings and activities and were directed at stakeholders, specific officials or wider audiences including Government officials and academics, as well as business- and consumer-oriented circles. The regional workshop on competition law enforcement in the Gulf region was held in Doha on 16–18 April 2012 as an UNCTAD XIII pre-conference event to discuss challenges and future perspectives for competition law and policy implementation in that region. The workshop was organized in cooperation and with the support of the Ministry of Business and Trade of Qatar. The meeting discussed the role of competition law and policy for economic development and consumer protection, basic concepts of competition law, and development challenges faced by the Gulf countries in competition law enforcement. UNCTAD organized a workshop on competition law enforcement against State-owned enterprises in India, jointly with the Competition Commission of India (21–22 May 2012) as well as a workshop in Moroni (17–18 October 2012) to raise awareness about the adoption of a competition law by the Comoros Government.

3. Training of case handlers

9. Within the framework of training activities for competition case handlers, several training workshops were organized in 2012–2013. Under the national component of the COMPAL programme, UNCTAD secretariat provided recommendations to the competition bills of the Plurinational State of Bolivia, El Salvador, Guatemala, Honduras, Nicaragua and Peru for their subsequent enactment, and included field missions to Guatemala (October 2012), Peru (March 2012) and El Salvador (May 2012) for dissemination purposes. Also in 2012, UNCTAD produced a guide on competitive public procurement for Ecuador, and a strategic plan for the competition agency of Honduras for the period of 2013–2019. In November 2012, the compilation of legislation, doctrine and jurisprudence on competition and consumer protection was accomplished in Colombia. The database is already being used by officials at the Superintendencia de Industria y Comercio (SIC) to

better substantiate their cases, and hence enhance the quality of the Agency's decisions. More than 1,100 documents were analysed and digitalized and more than 1,500 doctrine files were drafted and included in the database showing links to the relevant pieces of legislation. The Agency is committed to proceed with the activity with its own resources. Following the finalization of the Cartel Detection and Investigation Manual, a workshop was organized by UNCTAD in September 2012 in Indonesia for the staff of the Indonesian Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha – KPPU) to disseminate the Manual and to enhance the understanding of the Commission's case handlers on how to apply the detection and investigative techniques and tools described in the Manual to real cartel cases. UNCTAD also organized training courses on investigative techniques in the following countries: Seychelles (March 2012), Zambia (July 2012), the United Republic of Tanzania and Zimbabwe (November 2012) and Mongolia (December 2012). A training workshop on anti-competitive practices and competition law enforcement was organized back to back with the peer review dissemination event on 7 December 2012 in Ulaanbaatar for the staff of the Mongolian Agency for Fair Competition and Consumer Protection, with the participation of resource personnel from other competition authorities. The topics of the workshop were selected in consultation with the Agency based on the needs of the staff.

4. Institution-building

10. UNCTAD support to countries that have adopted national legislation, as well as newly established competition agencies, includes activities in support of institution-building. Accordingly, in Costa Rica UNCTAD provided counsel and support on the design and launching of the competition agency's website, which was presented to the public in April 2012. UNCTAD also organized in Ecuador a conference on competition issues, which was delivered in March 2012 in the Universidad de las Américas, followed by a workshop directed to trade associations to raise competition awareness. In addition, UNCTAD and the competition agency of Honduras met with representatives of the public sector (members of parliament, the executive, sector regulators, judges, and the consumer protection agency) in May 2012 to encourage competition culture and raise awareness on competition issues. On that occasion UNCTAD signed a memorandum of understanding with Honduras, by which the latter acceded to UNCTAD's COMPAL programme. This agreement was presented in the round table co-organized by UNCTAD and Honduras, entitled "State interventionism and competition policy", and in the subsequent dissemination event "The importance of competition for businesses, consumers and national development". In addition, UNCTAD and the Government of Bulgaria launched on 21 November 2012 the Sofia Competition Forum. This is a regional initiative which strives to foster cooperation and the development of regional ties in the Balkan region towards ensuring a uniform application of competition rules. The initiative aims to assist countries in the region in adopting and enforcing competition law and to maximize the benefits for these countries of well-functioning markets. The creation and improvement of competition legislation, capacity-building, application of best practices in law enforcement, and finding common solutions to the specific competition concerns in the region are key objectives of the Sofia Competition Forum.

Box 1. The Sofia Competition Forum

In November 2012 the Sofia Competition Forum was established as a joint initiative of UNCTAD and the Bulgarian Commission on Protection of Competition. The Forum aims to provide institution- and capacity-building to young competition authorities of the Western Balkans (Albania, Bosnia and Herzegovina, Croatia, Kosovo (United Nations Administrative Region, Security Council resolution 1244 (1999)), Montenegro, the former Yugoslav Republic of Macedonia, and Serbia). The initiative provides a forum for cooperation through seminars and a web-based platform for exchange of information. Through maintaining a web-based platform for the publication of information, materials and presentations, as well as for conducting webinars, the Forum expects to further facilitate cooperation between competition authorities in the region and foster the development of regional relations among them. Since its establishment, second and third Forums were held in Sofia in May and November 2013, respectively.

5. Consumer protection

11. In respect of consumer protection matters, capacity-building and training activities were implemented at the international and country levels. At the international level, the second International Consumer Protection Forum was organized jointly by UNCTAD and the Peruvian consumer protection agency on 11 and 12 November 2012 in Lima. The Forum gathered consumer protection agencies from the Americas as well as regional organizations (the Organization of American States), civil society organizations, and academia. Issues were discussed regarding (a) revision of the United Nations Guidelines for Consumer Protection; (b) educational programmes for young consumers; (c) e-commerce; (d) implementation of recall systems; (e) consumer protection in tourism. The third International Consumer Protection Forum will be held in Santo Domingo on 24 and 25 May 2013. At the country level, Nicaragua, El Salvador, and Saint Lucia provided their respective consumer protection bills for UNCTAD's technical review. The Advisory Group of Experts and UNCTAD provided comments for the aforementioned bills and supported the dissemination process in these three countries. In the Dominican Republic, UNCTAD participated in a two-day seminar in August 2012 with consumer associations organized by the Dominican Consumer Protection Agency. It provided counsel on how to best integrate the needs and demands of consumer organizations with those of businesses. In the Plurinational State of Bolivia, UNCTAD drafted the content of a sustainable consumption education programme which was later implemented in secondary schools and universities. This entailed setting up an interactive web page and several training sessions in educational centres. The highlight of this activity consisted of an e-organization of a competition among students, prizes being awarded for the three best projects. The award ceremony took place in December 2012. In Colombia, UNCTAD commissioned a viability report to launch a Consumer Quality Seal (Señor Consumidor) among Colombian retail businesses in November 2012. The objective is to promote a self-sustaining consumer protection culture in the private sector – not only in the capital, Bogotá, but throughout the national territory. In Costa Rica, a new Automatic Market Monitoring System was launched by UNCTAD in March 2012. This system provides consumers with real-time information on market prices and is able to produce statistical data and reports automatically. Additionally, UNCTAD supported the organization of a workshop on international consumer protection and enforcement network best practices in San José, training all staff of the consumer protection agency on enforcement issues. UNCTAD organized a two-day seminar on case handling and on safe products to disseminate the procedures used by the consumer protection agency to all relevant stakeholders (other governmental agencies, academia, businesses, lawyers, and media). In El Salvador, UNCTAD supported the strengthening of consumer

associations by organizing training activities and exchange programmes throughout 2012. This included legal counselling on the steps to becoming a formal consumer association.

12. In 2013, UNCTAD held a briefing for the diplomatic missions in Geneva on the United Nations Guidelines for Consumer Protection, as part of the preparatory process for the seventh United Nations Review Conference to be held in 2015. The briefing, held on 29 October, was attended by regional coordinators and by representatives of more than thirty permanent missions in Geneva, and was an opportunity to discuss the consultations on the United Nations Guidelines for Consumer Protection.

13. The UNCTAD secretariat clarified that these consultations will not involve negotiations about the pertinence of revising the United Nations Guidelines for Consumer Protection or its text, but rather will consist of transparent and inclusive preparatory work to be submitted for the consideration of the Review Conference in 2015. A related report will summarize best practices in each field, and may propose a draft resolution on actions to be taken. Each working group will meet principally online. UNCTAD will conduct further consultations at international and regional forums on consumer protection throughout 2014 and 2015. In due course, member States will be asked to designate the person(s) to take part in the working groups.

6. Peer review and follow-up

14. With a view to ensuring coherence between overall governmental approaches to privatization and liberalization of trade and investment regimes, UNCTAD has initiated the organization of voluntary peer reviews on competition law and policy which has become a core activity of UNCTAD's work on competition policy. These peer reviews provide an ideal forum to discuss market-based policy approaches that can promote development and ensure that markets work for the poor.

15. The peer reviews have become an appreciated part of UNCTAD work on technical assistance. They gave rise to a range of recommendations on how the application of the legislation might be made more effective at regional and national levels and how, through UNCTAD, to build capacity for the enforcement and advocacy of competition policy. In this regard, in 2012, as a follow-up of the tripartite peer review of the United Republic of Tanzania, Zambia and Zimbabwe, the UNCTAD Competition and Consumer Policies Branch organized a training of judges and commissioners from 23–27 September in Gaborone, Botswana. The workshop for judges falls within UNCTAD's framework of institutional capacity-building for effective competition law and policy enforcement. Training of judges at the regional level is one of the recommendations of the *Voluntary Peer Review of Competition Law and Policy: A Tripartite Report on the United Republic of Tanzania–Zambia–Zimbabwe*. The tripartite peer review session took place during the twelfth session of the Intergovernmental Group of Experts on Competition Law and Policy (IGE) held in Geneva in July 2012. In many countries, members of the legal profession and the bench may not have had an opportunity of handling competition cases. In addition, the enforcement of competition law in the context of globalization and changing markets demands greater sophistication and upgrading of skills for judges to effectively adjudicate competition cases. UNCTAD presented the results of the peer review of Nicaragua at the American University of Managua on 22 October 2013, and made a proposal for a technical assistance project to implement the peer review's recommendations.

16. To assess the value and impact of UNCTAD peer reviews, UNCTAD has commissioned an external audit to carry out an ex post evaluation of the reviews, the implementation of the recommendations and their impacts. The report will be presented in 2015 during the seventh United Nations Review Conference.

B. Regional and subregional activities

17. UNCTAD technical cooperation and capacity-building activities were increasingly provided within the framework of regional and subregional groupings.

1. COMPAL

18. Under COMPAL[1] a number of capacity- and institution-building as well as training and information-sharing events were provided to beneficiary countries.

Activities in 2012

19. The Advisory Group of Experts and UNCTAD provided recommendations on the competition bills of the Plurinational State of Bolivia, El Salvador, Guatemala, Honduras, Nicaragua and Peru for their subsequent enactment. It included field missions to Guatemala (October 2012), Peru (March 2012) and El Salvador (May 2012) for dissemination purposes. Also in 2012, UNCTAD assisted in the production of a Guide on Competitive Public Procurement for Ecuador, and a Strategic Plan for Competition Agency of Honduras for the period of 2013–2019.

20. In Colombia, a compilation into a database of legislation, doctrine and jurisprudence on competition and consumer protection was accomplished by November 2012. The database is already being used by officials at the SIC to better substantiate their cases, and hence enhance the quality of the agency's decisions. In Costa Rica, UNCTAD provided counsel and support on the design and launching of the competition agency's website, which was presented to the public in April 2012. In Ecuador, a conference on competition issues was delivered in March 2012 at the Universidad de las Américas, followed by a workshop directed at trade associations to raise competition awareness. In El Salvador, an advanced training for staff of the competition agency was organized in October 2012 on specific enforcement issues, such as abuse of collective dominance, predatory pricing and parallel practices. In Honduras, UNCTAD and the competition agency met with representatives of the public sector (members of parliament, the executive, sector regulators, judges and the consumer protection agency) in May 2012 to discuss advocacy of the competition culture and to raise awareness on competition issues. On that occasion, UNCTAD signed a memorandum of understanding with Honduras enabling the latter to accede to COMPAL. This agreement was presented during the round table, entitled "State interventionism and competition policy", co-organized by UNCTAD and Honduras, and also in the subsequent dissemination event entitled "The importance of competition for businesses, consumers and national development". In Nicaragua, UNCTAD conducted a conference to disseminate the findings of the peer reviews held in Geneva in 2013 and organized training courses on merger case law and analysis for the staff of the Nicaraguan Competition Agency. Two other training sessions on competition issues were organized, one for judges in general (May 2012) and another one for supreme court judges (October 2012). In Peru, a training course was organized for Peruvian regional offices on competition and consumer protection issues (November 2012). The activity is ongoing since 2009, integrating a long series of workshops and internships. National and international experts deliver the training courses, which are aimed at providing a decentralized competition and consumer protection enforcement throughout the country.

[1] Information on COMPAL can be found at http://unctad.org/en/Pages/DITC/CompetitionLaw/Competition-and-Consumer-Protection-Policies-for-Latin-America-%28COMPAL%29.aspx (accessed 14 April 2014).

21. Four manuals on common methodologies for economic analysis of country cases with the aim of facilitating the prosecution of cross-border anticompetitive practices were prepared under COMPAL. The first two manuals focused on Colombia and Peru. Following this, two training workshops were organized in these two countries for the staff of the competition agencies. Given the success of the experience, a workshop for Central American countries was held in November 2011, and after that, two more manuals were commissioned and produced in 2012 focusing on Central America. In December 2012, two final workshops for Colombia and Peru were organized with a COMPAL consultant and the staff of the agencies working closely in the application of all that had been learnt from real and hypothetical cases. Two regional trainings on competition issues for Colombian and Peruvian judges were delivered in December 2012. Another training session was organized on economic analysis of competition cases as part of a regional activity. The COMPAL Annual Conference took place in Lima from 20–22 June 2012. It discussed the country reports on activities undertaken in 2011 and 2012, and activities planned for 2012–2013, the regional component of COMPAL and substantive sessions on knowledge and human resources management, and country experiences with merger control.

Box 2. COMPAL activities implemented in 2013

Colombia

– Competition law training programme with Oxford University (in cooperation with Peru) 18–20 April;

– Organization of a study tour in Oxford, 18–30 October;

– Training for judges in cooperation with El Salvador and Nicaragua;

– Two training workshops for judges in June and December (in coordination with Peru).

Costa Rica

– Workshop on alternative dispute resolution and e-commerce;

– Training of the agency's human resources on consumer rights, 20–21 May.

Ecuador

Workshop on international bid rigging: The aim of the workshop was to provide lessons on how concurrent case law was taking place during the decade 2002–2012 for the liquid oxygen market in seven countries: Argentina, Brazil, Chile, Colombia, Mexico, Panama and Peru, 12–13 March.

El Salvador

– Training of judges in cooperation with Costa Rica and Nicaragua, 4–5 November;

– Training workshop on bid rigging addressed to members of the Public Procurement Offices in El Salvador, 10–15 March;

– Participation in the event to present the new consumer protection law amendments in March 2013.

Nicaragua

Training of judges, in cooperation with El Salvador and Costa Rica, 6–8 November.

Paraguay

Technical assistance to comment the proposed regulations for the new competition law which was prepared by the Inter-American Development Bank, 26–27 September.

Peru

– Competition law training programme with Oxford University, in cooperation with Colombia, 11–12 June;

– Two training workshops for judges in June and December 2013, in coordination with Colombia;

– Participation at the Latin American Competition Forum of the OECD in September – signature of the Lima Declaration, an informal cooperation agreement between Colombia, Chile and Peru.

Dominican Republic

International Consumer Protection Forum, 23–24 May.

2. The African Competition Programme

22. The Africa Competition Programme (AFRICOMP) aims at helping African countries develop appropriate administrative, institutional and legal structures for effective enforcement of competition and consumer law and policies. Since 2009, most of UNCTAD technical cooperation activities in Africa are undertaken within the framework of AFRICOMP. The programme provides for a more coordinated and streamlined approach in technical cooperation activities based on the needs of each beneficiary country while promoting regional cooperation. It emphasizes the beneficiary's ownership and is demand driven. The programme further seeks to establish closer links with the private sector, as well as with non-governmental organizations and local learning institutions. Under the umbrella of AFRICOMP, UNCTAD has assisted regional organizations in Africa in drafting and implementing competition legislations. It has also organized a number of conferences, seminars and workshops aimed at contributing to capacity-building and multilateral cooperation in the area of competition (see box 3).

Box 3. The African Competition Programme

Within the framework of AFRICOMP, country-specific capacity-building activities on competition policy and law were undertaken for Seychelles, the United Republic of Tanzania, Zambia, Zimbabwe and the West African Economic and Monetary Union (WAEMU). In Seychelles, training courses on competition law enforcement for the commissioners and case handlers of the Seychelles Fair Trading Commission were organized in March 2012. In the context of UNCTAD's support to WAEMU countries in reforming their competition framework, seminars aimed at garnering opinions from relevant stakeholders were held in Burkina Faso (5 October 2012), Senegal (9 October 2012), Niger (29–30 October 2012), Cote d'Ivoire (8–9 October), Togo (13–14 November), and Benin (15–16 November 2012). In addition, UNCTAD organized a regional competition forum in Ouagadougou (27–30 November 2012) on the relationship between competition authorities and sector regulators, and competition policy and public procurement within the WAEMU competition regime. In 2013, these activities were complemented with a two-week training course organized for their case handlers and the

representatives of their member States in cooperation with the Zurich School of Management and Law in Geneva from 1–12 July 2013, back to back with the thirteenth session of the IGE. In addition, two drafting sessions were organized in Geneva in cooperation with the Competition Directorate of the WAEMU Commission in September and November in Geneva. The aims of these sessions were to draft guidelines which would decentralize the enforcement power to member States, and thereby improve the enforcement of the community rules in WAEMU.

Four sector studies were published: "Competition issues in the economy of Mozambique" UNCTAD/DITC/CLP/2011/6; "Competition issues in the transport sector in Lesotho" UNCTAD/DITC/CLP/2011/4; "Competition issues in the tobacco industry of Malawi" UNCTAD/DITC/CLP/2011/5; "Competition issues in the petroleum industry in Zambia" UNCTAD/DITC/CLP/2011/1.

Box 4. The Latin American Economic System–UNCTAD Working Group on Trade and Competition

UNCTAD and the Latin American Economic System (SELA) secretariats formed the Working Group on Trade and Competition last October 2010 after having organized two regional meetings in Caracas (April 2009) and Brasilia (May 2010). The working group reflects the growing trend towards corporate concentration as a result of the internationalization of the world economy, which highlights the need for appropriate and effective mechanisms to preserve the conditions of free competition in markets, whether local or expanded, so that individuals can not unduly restrict or distort competition without risk of punishment. Furthermore, it has been stressed that technological advances increasingly encourage innovative ways to distort competition, for which authorities should often assess and update the rules, working methods and tools for implementation at the global, sectoral and regional levels, if it is the case. The sixth meeting will be held in the Dominican Republic in October 2014.

See: http://www.sela.org/view/index.asp?ms=258&pageMs=100539 (accessed 16 April 2014).

Box 5. The Euro-Mediterranean Competition Forum

In December 2011, a meeting was held in Vienna in the margins of the meeting on the Application of competition law in the Mediterranean countries, organized by the Austrian Competition Authority in cooperation with UNCTAD and the OECD, which addressed collaboration among neighbouring countries in the North and Middle East in competition matters. The idea was then presented in a meeting organized in the margins of the twelfth IGE in Geneva in July 2012, where the structure that the cooperation initiative could adopt was widely discussed. The debates resumed during a meeting held in Rabat on the 15 and 16 November 2012. The meeting consisted of three round tables on the needs of competition authorities in the region, organizational issues of the cooperation initiative, and the work programme for the following two years. The first Euro-Mediterranean Competition Forum workshop was organized on the margins of the thirteenth IGE in July 2013 and dealt with competition advocacy towards certain constituencies in the private and public sectors. The second workshop was held in Tunis in November 2013 and addressed the relationship between competition agencies and sector regulators. The next two meetings will be held on the margins of the ICN in Marrakech and in Malta, respectively, in September 2014.

II. Capacity-building provided by member States

Australia

23. During the period 2012–2013, the Australian Competition and Consumer Commission assisted/participated in:

- Cambodia in the drafting of its competition law;
- The second Association of Southeast Asian Nations (ASEAN)–Australia–New Zealand Free Trade Area (AANZFTA) ASEAN Experts Group on Competition (AEGC) capacity-building workshop, Sydney;
- Participation at the OECD–Republic of Korea competition training programme;
- AANZFTA ASEAN AEGC Capacity-building Workshop in Chiang Mai, Thailand;
- Delivery of a four-day investigation skills training course with Baker and McKenzie provided to the Vietnam Competition Authority in Hanoi;
- A fact-finding mission in the Philippines as part of an UNCTAD peer review of competition policy in that country;
- A four-month secondment to the Malaysia Competition Commission;
- A two-month secondment to the Vietnam Competition Authority;
- A two-month secondment of Vietnamese experts under AusAID's Australia Awards Fellowships.

European Union

24. The European Commission assisted China and India in 2012–2013. Competition weeks were organized in March 2012 in Beijing, October 2012 in Xian, March 2013 in Beijing and October 2013 in Kunming; European Union–China competition dialogues were held in June 2012 in Beijing and July 2013 in Brussels. The European Union also organized a merger workshop in Delhi, India.

Hungary

25. Activities in 2012:

- Twinning project for the Albanian Competition Authority (2011–2012);
- Keeping the OECD–Hungarian Competition Authority (GVH) Regional Centre for Competition in Budapest, Hungary in operation (since 2005);
- One-week consultation at the GVH for economists from the Armenian State Commission for Protection of Economic Competition.

26. Activities in 2013:

- Seminar organized for GVH staff by the OECD–GVH Regional Centre for Competition in Budapest, Hungary;
- Keeping the OECD–GVH Regional Centre for Competition in Budapest, Hungary in operation (since 2005).

India

27. During 2012–2013, India reported that its Competition Authority had conducted the following activities:

- Advised Malaysia Competition Commission on enforcement procedures and on guidelines in two key enforcement areas;
- Advised the Competition Commission of Singapore on merger procedural guidelines;
- Advised the Philippines Office of Competition on enforcement process and practices on merger;
- Short workshop on antitrust/merger issues in collaboration with the United States Federal Trade Commission (USFTC), 30 July–1 August 2013;
- Seminar on the Competition Commission of India by the American Chamber of Commerce at Mumbai, India, 14 February 2013;
- The workshop on cartel enforcement and technology and antitrust, in collaboration with the American Bar Association/International Bar Association, 14–15 February 2013;
- Cartel investigation in collaboration with the United States Department of Justice, 20 November 2013;
- Workshop on high technology and competition issues in collaboration with the USFTC, 17–19 December 2013.

Italia

28. Activities in 2012:

- Italy concluded twinning projects for Croatia, Albania and Algeria. The project consisted of seminars and conferences aimed at promoting competition culture;
- The Italian Competition Authority organized study tours for officials from China, the Russian Federation, Serbia, the former Yugoslav Republic of Macedonia, and Bosnia and Herzegovina.

29. Activities in 2013:

- Training of Consumer and Competition Officials and Awareness Campaign, funded by the European Social Fund in Malta; training sessions for the Malta Competition and Consumer Affairs Authority on: cartel investigation; abuse of dominant position; behaviour of undertakings in oligopolistic markets. The Italian Competition Authority is the project leader;
- Study visits at the Italian Competition Authority by the respective competition agencies from Serbia, the former Yugoslav Republic of Macedonia, and Bosnia and Herzegovina.

Russian Federation

30. The Federal Antimonopoly Service of Russia (FAS Russia) has provided technical assistance and capacity-building to young competition authorities of Kazakhstan, Kyrgyzstan, the Republic of Moldova and Mongolia within the ICN since 2009. Under this

programme, technical assistance was provided in the form of conference calls, meetings of the FAS Russia experts with representatives of competition authorities, and preparation of recommendations.

31. In 2012, the FAS Russia founded the Resource and Training Centre (hereinafter, the Training Centre FAS Russia) in Kazan, which is used to provide the Commonwealth of Independent States member States with professional and advanced training in the field of antimonopoly regulation and competition policy. The Training Centre FAS Russia hosts educational workshops and other events on key topics of competition law and enforcement.

32. The FAS Russia also provided experts and methodological assistance to the Competition Authority of Armenia on the preparation of documents on accession of Armenia to the Eurasian Economic Community and Common Economic Area.

Switzerland

33. Switzerland is the founding member of the COMPAL programme, and in this capacity extends a large part of its assistance to young competition authorities through COMPAL (see I.B.1 for further details).

Turkey

34. The Turkish Competition Authority has carried out the following activities:

- Conference on Needs Assessment of the Organization of Islamic Cooperation (OIC) Member States in the Field of Competition Law and Policy was held in Istanbul (Istanbul Conference), on December 2013. This conference was attended by more than 50 representatives from 32 States including OIC member States, observer States and by representatives from the Islamic Centre for Development of Trade, the Standing Committee for Economic and Commercial Cooperation of the OIC Coordination Office, the Islamic Development Bank, the Statistical, Economic and Social Research and Training Centre for Islamic Countries, and invited speakers. The Istanbul Conference aimed to address the needs of the OIC member States in the field of competition law and policy;
- Support provided for the preparation of the peer review report of Pakistan.

United States Federal Trade Commission[2]

35. The USFTC and the United States Department of Justice Antitrust Division provide competition technical assistance to countries undergoing transition to market economies and establishing new competition regimes (the USFTC also conducts a consumer protection assistance programme). The programme began in Central and Eastern Europe in the early 1990s and has expanded around the world. The USFTC has continued its robust programme of international competition and consumer protection technical assistance in the past year, conducting 38 missions in 19 countries including, among others, China, Colombia, Costa Rica, India, Morocco, the Russian Federation and South Africa. Originally funded by the United States Agency for International Development, the programme is now funded by the

[2] R Tritell and E Kraus, 2013, The Federal Trade Commission's International Antitrust Program, FTC, pp. 9–10.

USFTC and several other government sources including the United States Agency for International Development.

36. Many of USFTC's most successful programmes involve the placement of resident advisors with young competition agencies for several months. This allows their experts to provide on-the-job training in the context of the recipient agency's current cases. The advisor helps to develop the investigative and analytical skills of the agency staff and introduces staff to available tools to improve the agency's effectiveness in requesting and assessing remedies in the context of the country's laws, traditions, and economic circumstances. The resident advisor programme is particularly effective in allowing the advisor to work with a range of the recipient agency's staff. The USFTC has recently sent resident advisors to Colombia, South Africa, and Viet Nam. USFTC also conducts short-term programmes, in which experienced antitrust lawyers and economists provide training in investigational skills by using hypothetical cases to conduct simulated investigations involving issues that developing agencies typically encounter.

37. The "U.S. SAFE WEB Act", enacted in 2006 and recently renewed through 2020, enables the USFTC to host foreign competition and consumer protection agency officials and, in appropriate circumstances, provide them with access to non-public materials, enabling them to gain valuable experience by working with USFTC case teams. Pursuant to this authority, the Office of International Affairs established the International Fellows and Interns Program under which foreign officials spend up to six months at the USFTC learning how the USFTC's legal and economic staff conduct their work. When the Fellows return to their home agencies they can apply their experience in their work, share their learning with colleagues, and help to improve cross-border cooperation through the relationships they have developed. The USFTC has hosted 59 lawyers, economists and investigators from 28 jurisdictions, and will continue to expand the programme. USFTC attorneys and economists have also worked in the competition agencies of Canada, the European Union, Mexico and the United Kingdom of Great Britain and Northern Ireland as part of a staff exchange programme.

III. Capacity-building and technical assistance reported by recipient countries

Bosnia and Herzegovina

38. The Competition Agency of Bosnia and Herzegovina reported that staff attended seminars organized by the Regional Centre for Competition, the European Commission Technical Assistance and Information Exchange, the Sofia Competition Forum, ICN and OECD.

Colombia

39. Activities in 2012:

- Challenges of the protection of competition: Perspectives from 20 years of the Decree 2153 of 1992: This forum was supported by the European Union and took place in August. Lawyers, academics and representatives of international authorities participated in the event, during which topics such as the aims of antitrust law and its impact on associations were discussed;
- The ICN merger workshop – The role of economic evidence in merger analysis – Taking stock of the past and shaping the future: This workshop took place in

November; participants discussed about how economics can be used to understand specific issues of the market, how economics can help generating reliable evidence, and how economic data can be efficiently gathered. It was hosted under the auspice of ICN;

- Seminar workshop I: The role of the judicial power in the enforcement of competition law: This event was held in December and was addressed to the judicial and administrative authorities. Discussions dealt with an overview of the substantive and procedural aspects of the application of competition law. It was sponsored by COMPAL and UNCTAD (see section on COMPAL);
- During 2012, the process of becoming an OECD member was strengthened. The SIC began a "peer review" project during which its policies – including those related to competition – will be evaluated by other members of the international community.

40. Activities in 2013:

- Training workshop on bid rigging in public tenders: This workshop was held in February and its purpose was to teach assistants about bid rigging practices and why they are illegal. Some exercises were done to let people know how to detect bid rigging in public procurement processes through specific signs. The event was organized by the SIC together with the OECD;
- Improvement proposal: In the new versions of this seminar/workshop, the challenge will be to offer programmes with interesting and stimulating topics to be discussed. The high profile of the panellists will also be a key element. The SIC has been planning content to meet these needs since the beginning of 2014;
- In October 2013, the results of the peer review were presented to the Competition Committee of the OECD in Paris. Currently, the SIC is waiting for recommendations related to the document delivered and the presentation made.

Malaysia

41. Malaysia reported that in the last two years they received technical assistance from the Japan Fair Trade Commission, the European Commission, Australia and the OECD. An official of the Malaysia Competition Commission was seconded to the Australian Competition and Consumer Commission, August–November 2013. In addition, a competition regulatory expert from the Australian Competition and Consumer Commission was seconded to the Malaysia Competition Commission, September–December 2013.

Pakistan

42. Pakistan assisted in the following activities:

- UNCTAD *Peer Review on Competition Law and Policy: Pakistan* was published, including the formulation of a three-year capacity-building programme launch in 2014.

Peru

43. Activities in 2012:

- Assistance to the Working Group of the Congress of the Republic of Peru, responsible for the formulation of the Project on the Law of Control of Concentrations or Control of Mergers, Lima, 7 March;
- Forum on control of concentrations or merger control, Lima, 5 March;
- Discussion on concentrations or mergers, Lima, 6 March;
- Second meeting of the Latin American Economic System–UNCTAD Working Group on Trade and Competition, Lima, 18–19 June;
- Third annual conference of COMPAL II, Lima, 20–22 June;
- Course: Law on competition policy to heads of regional offices, Lima, 14 December;
- Training course on competition policy for officials of the Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI), Lima, 14 December;
- Workshop on collusive agreements and abuse of market dominance, to officials of INDECOPI, Lima, 14 December;
- Seminar/workshop on the role of the judiciary in the implementation of competition law, Lima, 12–14 December.

44. Activities in 2013:

- Workshop on mechanisms on cartel investigation – workshop on macro-regional capacity-building for regional offices, INDECOPI, Chiclayo, Peru, 18–19 February;
- Workshop on mechanisms on cartel investigation – workshop on macro-regional capacity-building for regional offices, INDECOPI, Arequipa, Peru, 20–21 February;
- Workshop on competition issues, Lima, 14 June;
- Second seminar/workshop on the role of the judiciary in the implementation of competition law, Lima, Peru, 13–14 June;
- Third seminar/workshop on the role of the judiciary in the implementation of competition law, Lima, 9–10 December.

Philippines

45. Per issuance of Executive Order No. 45, series of 2011, the Department of Justice, Office for Competition (DOJ–OFC) has been designated the Philippines Competition Authority. The Authority now acts as co-chair of the DOJ-OFC Working Group on Advocacy and Partnership.

46. In 2012, the Philippines Competition Authority experts were trained in an introductory course on competition law, case handling and investigative techniques and advanced training on competition law and policy. In 2013, the Philippines competition institutional and legal framework was set up. The work of the Authority was also devoted to the promotion of compliance programme and advocacy activities. The Philippines has

also volunteered to submit the review of its competition policy to the fourteenth session of UNCTAD's IGE that will take place in Geneva from 7 to 11 July 2014.

Republic of Moldova

47. The Competition Council of the Republic of Moldova benefited from technical assistance mainly from international bodies, the European Union and the World Bank, and also from the Interstate Council on Antimonopoly Policy, the Regional Centre for Competition in Budapest and from other competition authorities: FAS Russia, the Romanian Competition Council, among others.

48. For 2014, through the World Bank's development policy operation, the Competition Council of the Republic of Moldova will start to implement an electronic platform on the notification of state aid. The platform will be a novelty within the Commonwealth of Independent States and the European Union. It will give the opportunity to every provider of state aid to notify the Competition Council online.

49. Activities in 2012:

- Adoption and publication of the Law No. 183 of 11 July 2012 on Competition and the Law No. 139 of 15 June 2012 on State Aid;
- The twinning project was very important for improving the legislation of the Republic of Moldova in the field of competition. Thanks to this project the best European and World practices were integrated into the aforementioned legislative acts.

50. Activities in 2013:

- Revision of the by-law on the sectorial state aids, more specifically the by-law on airports, involved consultation with a World Bank expert. The cooperation was very efficient.
- Experts from the Romanian Competition Council delivered several workshops on competition and state aid for the employees of the Competition Council of the Republic of Moldova.
- In 2012 and 2013 there was cooperation with FAS Russia. Employees of the Competition Council made several study visits to the Training Centre FAS Russia and experts from the Russian Federation delivered seminars and workshops in the Republic of Moldova.

Seychelles

51. Competition officials from Seychelles attended the Common Market for Eastern and Southern Africa workshops in March 2012. UNCTAD conducted a fact-finding mission in Seychelles for the preparation of the competion policy peer review. The preliminary report was presented to stakeholders in March 2013 for comments.

IV. Assistance provided by other international organizations

A. Capacity-building by the Organization for Economic Cooperation and Development

52. Capacity-building and technical assistance activities of the OECD during 2012–2013 were not reported to UNCTAD. Details of these activities can be found on the website of the Organization.[3]

B. Capacity-building by the International Competition Network

53. The ICN's technical assistance activities for 2012–2013 were not reported to UNCTAD. They can be found on the Network's website.[4]

V. Impact of capacity-building

54. In a study prepared by the UNCTAD secretariat for the eleventh session of the IGE, it was indicated that the assessment of the impact of capacity-building is a difficult and complex task.[5] This exercise requires information and data that can be difficult to collect to conduct this type of exercise. Nevertheless, in the following lines we provide information on this issue as it was reported through our questionnaires by some member States. Lessons learnt from the experiences of these member States are also presented.

A. Information from member States

55. The Italian Competition Authority reported that its twinning project with the Croatian Competition Agency proved extremely fruitful. The technical assistance programme attained its objectives of enhancing the capacity of Croation Competition Authority staff to handle antitrust cases and strengthening their familiarity and awareness of competition enforcement techniques, in view of the imminent admission of Croatia to the European Union. Furthermore, the current training project in Malta allows for experience-sharing between the two competition agencies that will enable them to better frame and tackle competition issues and cases. The projects in Albania and Algeria, which successfully promoted competition culture, and the study visits at the Italian Competition Authority by several foreign agencies, increased the opportunities for mutual understanding and informal cooperation.

56. The main lesson learned from the experience of the Italian Competition Authority in technical assistance is that a successful programme implies flexible and active collaboration between the recipient and the provider, as well as a clear understanding of the needs of the recipient and the environment within which it operates.

57. The European Union indicated that technical assistance programmes are a useful tool in assisting the recipient countries in further developing their competition regimes. In order for these programmes to have the maximum beneficial effect it is important that they are demand driven, that is, that they address real needs identified by the recipient country.

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[3] See http://www.oecd.org/competition/ (accessed 24 April 2014).

[4] See http://www.internationalcompetitionnetwork.org/ (accessed 22 April 2014).

[5] See UNCTAD, 2011, Effectiveness of capacity-building and technical assistance extended to young competition agencies, Note by the UNCTAD secretariat, TD/B/C/CLP/11/Rev.1.

58. The Competition Authority of Peru reported that technical assistance provided by the COMPAL programme contributes to strengthening the technical capabilities of INDECOPI on competition and consumer protection. It also provides the opportunity for an exchange of experiences between similar institutions within members of COMPAL.

B. Lessons learnt from experience

59. In developing countries and economies in transition most competition agencies are in the early stage of enforcing their laws and they have to overcome many other challenges to create strong foundations that would allow them to fulfil their legal obligations effectively.[6] Some of these challenges are related to the functioning of the competition agency. Others are inherent to the environment within which the agency operates.

60. As regards the functioning of the competition agency, it was pointed out that transplantation of Western-style competition law into a developing economy would be a risky initiative.[7] Indeed, the challenges faced by these countries do not exist in those countries that had long experience with competition policy, namely, the meagre resources available for the new competition agencies, the limited indigenous expertise on competition law and policy, the lack of competition culture, limited expertise and resources of the judicial systems as well as limited access to business information.

61. The COMPAL Global programme draws heavily on lessons learnt during COMPAL I and II, identified by the project team and the independent evaluation of 2012. These include:

- The opportunity for a large, thematic global programme in competition and consumer protection: The previous phases of COMPAL had demonstrated that a large, long-term programme provided a level and continuity of support that delivered considerable change across Latin America. There is, therefore, a significant opportunity for replicating and scaling up this approach in other regions.
- The importance of regional leaders: The competition agencies of Colombia and Peru played a key role in supporting and mentoring staff from countries with weaker agencies and in generating momentum for COMPAL activities in the region. This has influenced the selection of partner countries for COMPAL Global.
- The need for UNCTAD to strengthen its technical capacity: To better meet the needs of the more advanced competition and consumer protection agencies, UNCTAD's Competition and Consumer Policies programme is currently recruiting senior staff at headquarters, and will appoint highly qualified resident advisers in the field.
- The importance of in-country counterparts with substantive knowledge: In previous COMPAL phases some project counterparts (national coordinators) were members of the Competition Agencies' International Relations Unit, without necessarily having a background in the substantive business of the agency. This has limited their capacity to contribute constructively to programme activities. In COMPAL Global, UNCTAD will seek counterparts with a comprehensive understanding of

[6] This issue is discussed in depth in UNCTAD, 2011, Foundations of an effective competition agency, Note by the UNCTAD secretariat, TD/B/C.I/CLP/8.

[7] W Kavacic, 1997, Getting started: Creating new competition policy institutions in transition economies, *Brooklyn Journal Of international Law*; 23:403–452; quoted in OECD, 2009, Challenges faced by young competition authorities, Note by the OECD secretariat, Global Forum on Competition, 19–20 February 2009.

competition and consumer protection issues who will be able to contribute effectively to the programme's activities.